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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/580,300

10/23/2008

Michael Wagener

3968-179

4066

11753

7590

01/26/2012

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EXAMINER

PURDY, KYLE A

ART UNIT

PAPER NUMBER

1611

MAIL DATE

DELIVERY MODE

01/26/2012

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/580,300	Applicant(s) WAGENER ET AL.	
	Examiner K Purdy	Art Unit 1611	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 January 2012 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 36-42,44-46 and 48.
 Claim(s) withdrawn from consideration: 43 and 47.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Allison M. Ford/
Primary Examiner, Art Unit 1653

Continuation of 11. does NOT place the application in condition for allowance because: Applicants arguments filed 1/19/2012 regarding the rejection of claims 36-42, 45, 46 and 48 made by the Examiner under 35 USC 103(a) over Terry in view of Vissing have been fully considered but they are not found persuasive and is MAINTAINED for the reasons of record.

Applicants arguments filed 1/19/2012 regarding the rejection of claim 44 made by the Examiner under 35 USC 103(a) over Terry in view of Vissing in further view of Burrell have been fully considered but they are not found persuasive and is MAINTAINED for the reasons of record.

In regards to the 103(a) rejection, Applicant asserts the following:

A) Vissing does not disclose or suggest the claimed layered materials having hydrophilic transport release layer with the claimed composition and properties.

In response to A, the Examiner disagrees. Applicants own specification is cited as evidence. [0017] of Applicant's published application teaches that "[H]ydrophilic coating materials according to the invention can preferably be obtained with an O₂ content of 40-95% (remainder of operating atmosphere: HDMSO)." Thus, a hydrophilic coating material is obtained so long as oxygen is present in an amount of at least 40% of the plasma mixture. Example 1 provides O₂ in an amount of 260 and HDMSO in an amount of 120 which results in an O₂ content of about 60% (260 O₂/(260 O₂ + 120 HDMSO)). Example 2 provides O₂ in an amount of 100 and HSMDO in an amount of 27.5 thereby resulting in an O₂ content of about 80%. The plasma polymer of Example 1 has an atomic content 39.5% of O, 36.5% of C and 24% of Si and plasma polymer of Example 2 has an atomic content of 46% O, 30% of C and 24% of Si. It is noted that Example 1 reads on the plasma polymer requirements of claim 1. Moreover, the polymer would be hydrophilic, evidenced by Applicants teaching that a hydrophilic coating material is obtained so long as oxygen is present in an amount of at least 40% of the plasma mixture; Example 1 provides 60% O₂ in the reaction mixture and therefore would have hydrophilic properties.